

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

RATE ADJUSTMENT DUE TO
EXTRAORDINARY OR EXCEPTIONAL
CIRCUMSTANCES

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Docket No. R2013-11R

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
OPPOSITION TO U.S. POSTAL SERVICE MOTION TO STRIKE
(July 15, 2015)**

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc.

(hereinafter "Valpak") hereby submit their opposition to the Motion of the United States Postal Service to Strike New Analyses Improperly Submitted in Reply Comments by GCA/NPPC and Valpak (July 8, 2015) pursuant to Commission Rule 3001.21(c).¹ The Postal Service's request for extraordinary relief should be denied for reasons discussed herein.

The Postal Service accuses Valpak and GCA/NPPC of "gamesmanship to subvert the process established by Order No. 2540" because they "deliberately withheld any actual quantification of how much lost volume would be counted under the methodologies their initial comments described." Motion to strike at 1.

With respect to Valpak, the Postal Service describes the methodology presented in Valpak's Initial Comments, but complains that Valpak "did not explain, let alone quantify, how that information should be used to 'count' lost volume." Motion to strike at 3. The Postal Service laments that Valpak "[f]ailing to submit its methodology and quantification [in

¹ "Motions to strike. Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding...."

Initial Comments] improperly and unfairly deprived the Postal Service of its ability to respond.” *Id.* at 4. Consider the following.

1. It continues to be Valpak’s position, as set out in its Initial Comments (at 1-7), that it is, even now, premature for the Commission to act — until the U.S. Court of Appeals issues its mandate in this case. Although the Commission may consider the issues on remand, it cannot act until the mandate is issued, that is, no sooner than July 27. Therefore, any thought that it is somehow now too late for the Postal Service to submit whatever comments that it might want to submit to the Commission is unjustified.

2. The Postal Service motion to strike has already specifically addressed Valpak’s alternative proposal.² *See* Postal Service Reply Comments at 59-61. Therefore, the Postal Service’s claim that it did not have the ability to respond to Valpak’s proposal — when it specifically did so — is wrong. Should the Postal Service feel the need to file a further substantive response, Valpak would not object.

3. In case after case, the Postal Service has submitted late comments not expressly authorized by Commission rules, apparently always wanting to have the last say. Valpak

² The Postal Service put its reply to Valpak in Section V (“There Is No Reason for the Commission to Revisit the ‘New Normal’ Framework that the Court Has Already Upheld”) when it should have responded to Valpak’s Initial Comments in Section IV of its Reply Comments, where it argued: “The Commission Should Reject the Mailers’ Alternative Formulations for Correcting the ‘Count Once’ Error.” *Id.* at 14. In fact, Valpak was defending the new normal framework, and extending that analysis to (i) how many times to count lost volume and (ii) whether to evaluate all claimed lost volume in some mechanistic knee-jerk fashion at 100 percent regardless of the Postal Service’s ability to adjust its operations as evidenced by **actual** adjustments — fully consistent with the Court’s suggestion to determine “when to stop counting lost mail volume.” Alliance of Nonprofit Mailers, slip op. at 17.

resists the urge to detail the number of times the Postal Service has presented incomplete or even incorrect information in its initial submissions in dockets before the Commission, not demonstrating concern about mailers' ability to comment on Postal Service proposals. *See generally, e.g.*, Docket No. R2015-4.³ Yet here the Postal Service expresses concern that it “would have the opportunity to evaluate and address [commenters'] analyses.” Motion to strike at 1-2. Also, in many cases, the Postal Service files a motion for leave to file an additional set of comments after reply comments, in order to respond to issues addressed in the replies. *See, e.g.*, Docket No. R2013-1, Reply Comments of the United States Postal Service (Nov. 9, 2012) (where Commission Rules and order provided for only one round of comments). It could do so in this case. Certainly, such an approach would be preferable to granting the Postal Service's motion and reducing the information available to the Commission on the record.

4. A brief review of the chronology of this docket demonstrates that Valpak filed its comments timely, and that its recommendations should be considered by the Commission.

a. The Postal Service presented in its June 8 motion to commence proceedings only a rudimentary proposal for a simplistic elimination of the “count once” rule. It claimed that it

³ “The Postal Service's Notice contained many errors and inconsistencies and lacked information required by title 39 and the Commission's regulations. Sixteen Chairman's Information Requests (CHIRs) were issued in an attempt to bring the filing into compliance with statutory and regulatory requirements, clarify the Postal Service's proposed price adjustments and classification changes, and ensure the Commission and commenters had accurate and complete data to review. Those 16 CHIRs contained over 100 separate questions and requests pertaining to the Postal Service's initial proposal. An additional CHIR was subsequently issued pertaining to the Response to Order No. 2398.” Order No. 2472 (May 7, 2015) at 5-6.

had been unable to cut costs to adjust to declining volume. The sketchy idea that the Postal Service presented in its motion was the only demand to which the mailers could comment in their Initial Comments. Valpak prepared and presented a simple table refuting the Postal Service claim it could not cut its costs, showing that the Postal Service, in fact, had been able to cut expenses by reducing the number of employees. The Postal Service quibbles about whether it had the ability to reduce institutional costs or attributable costs, but the fact remains that between 2008-2011 it was able to reduce its employee count substantially, and employee costs constitute about 80 percent of the Postal Service's expenses, representing both attributable and institutional costs. Valpak suggested that the Commission utilize its expertise to evaluate "the Postal Service's cost reduction efforts" to adjust the number of lost pieces instead of counting them 100 percent in second and third years after such volume was initially lost. *See* Valpak Initial Comments at Section IV.

b. The Postal Service's Initial Comments presented, for the first time, a major change in its proposal to eviscerate the rate cap and obtain additional revenue. It no longer demanded an infinite amount of lost revenue, for an indefinite period, but made a demand for volume lost through FY 2013. USPS Initial Comments at 13-21. Actually, mailers had expected that the Postal Service's Initial Comments would present a more refined proposal for applying new-normal-like "considerations, rather than a mechanical tally [to determine] when to stop counting lost mail volume." Alliance of Nonprofit Mailers, slip op. at 17. However, the Postal Service chose to seek a major revision to the "new normal" determination. Once it was clear that the Postal Service had no intention of presenting an adjustment mechanism to the Commission, it made sense for Valpak to apply its analysis to the volumes already determined

by the Commission to be the annual losses due to the recession, as presented in Table 2 of Valpak's Reply Comments.

c. The Postal Service's Initial Comments presented two new proposals, which were not in its earlier motion, for changing the "new normal" — contrary to its Reply Comments claims — extending the new normal out until FY 2013 as well as combining the new normals for the various classes of mail. The Postal Service already presented a proposal in its motion, and Commission Order No. 2540 invited "comment on the Postal Service's methodological approach for accounting for volume losses due to the Great Recession in a cumulative manner." *Id.* at 7. Valpak's Reply Comments responded to the Postal Service's newly revealed request for additional revenue based on volume lost through FY 2013 — made for the first time in its Initial Comments — and asked the Commission to reject the Postal Service's proposals.

For the foregoing reasons, the Postal Service's motion to strike should be denied.

Respectfully submitted,

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